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No. 92-1990

# In the Supreme Court of the United States

OCTOBER TERM, 1993

REBA DOUGLAS, ETC., PETITIONER

*v.*

GERALD H. MILLER, DIRECTOR, MICHIGAN DEPARTMENT OF SOCIAL SERVICES, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES IN OPPOSITION

DREW S. DAYS, III
*Solicitor General*

FRANK W. HUNGER
*Assistant Attorney General*

MICHAEL JAY SINGER
JENNIFER HAY ZACKS
*Attorneys*

*Department of Justice*
*Washington, D.C. 20530*
*(202) 514-2217*

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## QUESTIONS PRESENTED

1. Whether the Secretary of Health and Human Services reasonably interpreted 42 U.S.C. 1396k(a) to render petitioner ineligible for Medicaid benefits because she has not cooperated in establishing the paternity of one of her minor children born out of wedlock.

2. Whether the denial of Medicaid benefits to petitioner violates the equal protection component of the Due Process Clause of the Fifth Amendment.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-22) is reported at 990 F.2d 875. The opinion of the district court (Pet. App. 23-34) is reported at 792 F. Supp. 1030.

### JURISDICTION

The judgment of the court of appeals was entered on March 25, 1993. The petition for a writ of certiorari was filed on June 16, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Petitioner had two minor children and was pregnant with a third child when she applied for Medicaid benefits in 1989. Pet. App. 2. As "a condition of eligibility for medical assistance," the Medicaid Act "require[s]" that an applicant "assign [to] the State any rights" she may have "to support * * * and to payment for medical care from any third party." 42 U.S.C. 1396k(a)(1)(A). An applicant must also "cooperate * * * in establishing the paternity of * * * a child born out of wedlock." 42 U.S.C. 1396k(a)(1)(B). At the time petitioner sought benefits, an applicant could be excused from the cooperation requirement only if she were found to have "good cause" for failing to cooperate. *Ibid.* The Michigan Department of Social Services (MDSS) denied petitioner's application for Medicaid benefits because she had failed to cooperate without good cause in establishing the paternity of her oldest child, Ezikio, and in assigning rights for his support. Pet. App. 2.

Petitioner filed suit in district court against MDSS and the Secretary of Health and Human Services (HHS), challenging the denial of Medicaid benefits. The district court granted a preliminary injunction barring HHS and MDSS from "interpreting the assignment and cooperation requirements of the Medicaid statute to bar prenatal * * * care of pregnant women who have complied with the requirements with respect to the child *in utero*." Pet. App. 3.* The Secretary appealed the preliminary injunction. While the appeal was pending, Congress amended 42 U.S.C. 1396k(a)(1)(B) to exempt certain pregnant women—those "described in [42 U.S.C.1396a(*l*)(1)(A)]"—from the cooperation require-

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* Despite the broad form of the preliminary injunction, the district court never certified a class.

ment. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 4606(a), 104 Stat. 1388-170 (codified at 42 U.S.C. 1396k(a)(1)(B) (Supp. III 1991)). After oral argument, the court of appeals remanded the case to allow the district court to consider the effect of the 1990 amendment. Pet. App. 3.

On remand, the district court held that, "following the plain language of the statute," Pet. App. 29, petitioner was ineligible for Medicaid because she had failed to cooperate in establishing the paternity of Ezikio. The court concluded that petitioner was not within the group exempted from the cooperation requirement by the 1990 amendment. *Id.* at 28. The court also denied petitioner's claim that the denial of benefits violated her right to equal protection. The court reasoned that the Act encourages Medicaid applicants to help establish paternity, and thus is rationally related to the legitimate governmental interest in promoting "a more fiscally sound Medicaid program" by making more resources available to poor children. *Id.* at 32.

A divided panel of the court of appeals affirmed. The court first reviewed the statutory language, concluding that "*all applicants* 'for medical assistance' are '*required*' to assign rights, and cooperate in establishing paternity and pursuing third parties." Pet. App. 7 (emphasis supplied by court). The court then interpreted the 1990 amendment to "exempt[ ] from the cooperation requirement a specific subset of pregnant women described in [42 U.S.C. 1396a(*l*)(1)(A)]." Pet. App. 10. The court explained that Section 1396a(*l*)(1)(A) in turn includes only those women "who are *not* described in any of subclauses (I) through (III) of [42 U.S.C. 1396a(a)(10)(A)(i)]." Pet. App. 10 (emphasis added by court). Because petitioner "is described in [subclause] III," the court concluded that she "is not covered by the 1990

Amendment's exception to the general cooperation requirement." *Id.* at 10, 11.

The court of appeals rejected petitioner's contention that the plain language of the statute should be overridden by "Congress's unlegislated intent," observing that the "perceived legislative history of the relevant statutes should not be allowed to trump duly enacted laws." Pet. App. 14. Moreover, the court noted that even if it thought the statute ambiguous, it would still defer to the Secretary's interpretation, and particularly so in light of the conflicting policies involved. *Id.* at 12-13.

Finally, the court held that the relevant statutory provisions did not violate petitioner's right to equal protection, because "the government could rationally conclude that * * * requiring low-income pregnant women to cooperate in establishing paternity for children born out of wedlock makes more money available for all Medicaid recipients by making it easier to find putative fathers who should pay medical expenses." Pet. App. 16.

Chief Judge Merritt dissented. Pet. App. 17-22. He was of the view that the legislative history of the 1990 amendment expressed "a clear legislative purpose" to exempt all pregnant women from the cooperation requirement, *id.* at 19, and he believed that the majority should have ignored the "dangling modifier" in Section 1396a(*l*)(1)(A) that restricts that provision to individuals "not described in any of subclauses (I) through (III)." *id.* at 21.

## ARGUMENT

Review by this Court is not warranted. The court of appeals correctly interpreted the statutory provisions at issue, and its decision creates no conflict among the courts of appeals.

1. a. The Secretary's interpretation of the Medicaid Act represents a reasonable construction of the statu-

tory language involved. The Act "require[s]," as "a condition of eligibility for medical assistance," that an applicant "cooperate * * * in establishing the paternity of * * * a child born out of wedlock." 42 U.S.C. 1396k(a)(1)(B). The 1990 amendment did not eliminate the cooperation requirement, but merely exempted a specific subgroup of pregnant women—those "described in [42 U.S.C. 1396a(*l*)(1)(A)]." 42 U.S.C. 1396k(a)(1)(B) (Supp. III 1991). Section 1396a(*l*)(1)(A) in turn refers to "women during pregnancy * * * who are *not* described in any of subclauses (I) through (III) of [42 U.S.C. 1396a(a)(10)(A)(i)]." (emphasis added). In other words, those women described in subclauses I through III are not covered by the amendment, and are therefore not exempt from the cooperation requirement. Only those women described in subclause IV are exempt.

Petitioner is described in subclause III, the subclause covering pregnant women who meet certain eligibility requirements of the Aid to Families with Dependent Children (AFDC) program—including those, such as petitioner, who are not eligible for AFDC but "otherwise meet[ ] [AFDC's] income and resources requirements." 42 U.S.C. 1396d(n); see 42 U.S.C. 1396a(a)(10)(A)(i)(III). By its terms, Section 1396a(*l*)(1)(A) excludes any women covered by subclause III. Since the 1990 amendment exempts only those applicants included in Section 1396a(*l*)(1)(A), petitioner is required to cooperate in establishing paternity as a condition of obtaining Medicaid benefits.

b. The legislative history of the 1990 amendment does not compel a contrary conclusion. Although the provisions of the Medicaid Act at issue in this case require careful parsing, they are not ambiguous. In any event, the legislative history is not at odds with the Secretary's interpretation. The House Report noted the committee's concern about the "application of [the coop-

eration and assignment] requirements to women who are applying *only* for pregnancy-related coverage." H. R. Rep. No. 881, 101st Cong., 2d Sess. 106 (1990) (emphasis added). That passage refers exclusively to women in Group IV, who are eligible only for pregnancy-related benefits. The report language does not encompass Medicaid applicants in Groups I, II, and III, all of whom must be provided with the full range of Medicaid care and services and are not restricted to pregnancy-related coverage. See 42 U.S.C. 1396a(a)(10)(A). The committee report went on to state that the amendment exempted "pregnant women applying for Medicaid *on the basis of their pregnancy and low income*." H.R. Rep. No. 881, *supra*, at 107 (emphasis added). That description similarly applies only to Group IV women, whose eligibility is based on pregnancy and low income. It does not apply to members of Groups I, II, or III, whose eligibility for Medicaid is based on meeting certain eligibility requirements of other government programs.

c. Had Congress wished to exempt all pregnant women from the cooperation requirement, it could easily have done so. Instead, Congress chose to amend the Act to exclude only particular groups of pregnant women, which do not include petitioner. There is simply no basis in the statutory language or legislative history for petitioner's assertion that Congress "established a new mandatory categorically eligible group" comprised of persons who need not comply with any of the other requirements of the Medicaid Act. See Pet. 14.

2. a. Petitioner makes two arguments based on statutory language. First, petitioner contends that the court of appeals erred in considering language in Section 1396a(*l*)(1)(A) limiting the provision to women "who are not described in any of subclauses (I) through (III) of [42 U.S.C. 1396a(a)(10)(A)(i)]." Petitioner characterizes this limiting language as a "dangling phrase" which should

be ignored. See Pet. 18. However, the Secretary's interpretation, which takes account of all of the statutory language is, at a minimum, reasonable. Significantly, petitioner's contrary interpretation would have the effect of also reading the income limitations out of this Section of the Act, since they are contained in the same "dangling phrase."

Second, petitioner relies on 42 U.S.C. 1396a(a)(10)(A)(i), which requires a state plan to "provide * * * for making medical assistance available" to defined groups of people, including "qualified pregnant women." 42 U.S.C. 1396a(a)(10)(A)(i)(III). Contrary to petitioner's suggestion, this Section requires only that medical assistance be "available" under a state plan. It cannot be read to require that such assistance be provided regardless of whether applicants comply with other Medicaid eligibility requirements.

b. Petitioner also suggests that "Congress' belief in the need for prenatal care for all poor women is evident from a review of" the legislative history of the 1990 amendment and other statutory provisions concerning prenatal care. Pet. 21; see Pet. 20-25. But as the court of appeals correctly observed, while Congress has expressed concern about prenatal care, "the statutes and relevant legislative history evidence an equally strong congressional commitment to the policy of paternity cooperation as a trade-off for the expenditure of massive public funds for medical care for certain of the nation's poor mothers." Pet. App. 12.

c. Contrary to petitioner's contention, Pet. 25-26, the Secretary's interpretation is entitled to particularly great deference, in light of the complexity of the statutory scheme at issue. See *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 43-44 (1981). Nor does the internal memorandum cited by petitioner (see Pet. 25; Pet. App. 36-38) diminish the deference to be accorded to the Secretary's

interpretation. Indeed, the memorandum does not even concern the cooperation requirement. The memorandum urges that the phrase "who are not described in any of subclauses (I) through (III) of [42 U.S.C. 1396a(a)(10)(A)(i)]" be deleted from 42 U.S.C. 1396a(*l*)(1) in order to facilitate application procedures. See Pet. App. 37. The language relied on by petitioner, "as Congress intended," refers to the simplification of application procedures, not to the waiver of the requirement of cooperation in establishing paternity. *Ibid.*

3. The holding below does not conflict with *Lewis* v. *Grinker*, 965 F.2d 1206 (2d Cir. 1992). In *Lewis*, the Second Circuit construed the citizenship requirements of the Medicaid Act and held that illegal aliens are entitled to pregnancy-related Medicaid benefits notwithstanding statutory language limiting coverage of such aliens to emergency situations. In the instant case, the Sixth Circuit interpreted the wholly unrelated Medicaid requirement that applicants cooperate in establishing paternity of their children born out of wedlock. The "single narrow question," *id.* at 1208, decided by the *Lewis* court did not implicate the cooperation requirement. Because the two decisions interpret two entirely distinct statutory provisions, they do not conflict.

To be sure, the Sixth Circuit did eschew "the general approach of the *Lewis* court's focus on Congress's unlegislated intent," and instead construed "the applicable law as written by Congress." Pet. App. 14. However, this philosophical disagreement about the "proper judicial role," *ibid.*, and the relative weight to be given to legislative history in statutory interpretation, is not the kind of conflict that merits this Court's attention.

4. Petitioner argues (Pet. 26-28) that the requirement of cooperation in establishing paternity is irrational and therefore violates her right to equal protection. But as the court of appeals correctly noted, "the government

could rationally conclude that * * * requiring low-income pregnant women to cooperate in establishing paternity for children born out of wedlock makes more money available for all Medicaid recipients by making it easier to find putative fathers who should pay medical expenses." Pet. App. 16. Moreover, Congress's decision to excuse only one group of pregnant women from the statutory requirement is a sensible one, because the exempted group is eligible only for pregnancy-related services, not for payments for other medical care, and therefore is the group likely to pose the least potential cost to the government.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
*Solicitor General*

FRANK W. HUNGER
*Assistant Attorney General*

MICHAEL JAY SINGER
JENNIFER HAY ZACKS
*Attorneys*

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